



THE CITY OF NEW YORK  
**LAW DEPARTMENT**  
100 CHURCH STREET  
NEW YORK, NY 10007

**MICHAEL A. CARDOZO**  
*Corporation Counsel*

**DANIEL GOMEZ-SANCHEZ**  
Labor and Employment Law Division  
phone: 212-788-0883  
fax: 212-788-0940  
email: dgomez@law.nyc.gov

July 20, 2012

**BY ECF**

Honorable John Gleeson  
United States District Judge  
United States District Court  
Eastern District of New York  
225 Cadman Plaza  
Brooklyn, NY 11201

Re: Forgione v. City of New York, et al.  
No. 11 CV 5248 (JG) (MDG)

Dear Judge Gleeson:

I am an Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for defendants City of New York, Deputy Inspector Kavanagh, and Dr. Lea Dann (incorrectly sued herein as “Dr. Dane”) in the above-referenced action.

I write to provide the Court with the Second Circuit case law governing the consideration of extraneous documents not attached to the complaint—in this case, the collective bargaining agreement applicable to Captains in New York City Police Department—on a motion to dismiss. “Even where a document is not incorporated by reference, the court may nevertheless consider it where the complaint ‘relies heavily upon its terms and effect,’ which renders the document ‘integral’ to the complaint”. See Chambers v. Time Warner, Inc., 282 F.3d 147, 153 (2d Cir. 2002) (citing to International Audiotext Network, Inc. v. American Telephone and Telegraph Company, 62 F.3d 69 (2d Cir. 1995)) (court resolving motion to dismiss can consider: (1) documents that plaintiff attached to the pleadings; (2) documents to which plaintiff referred in the complaint; (3) matters of which judicial notice may be taken; (4) documents in plaintiff’s possession; and (5) documents of which plaintiff had knowledge and upon which plaintiff relied in bringing the action).

In this instance, the Court may take judicial notice of the collective bargaining agreement, especially since plaintiff does not dispute its applicability. See Nakahata v. New York-Presbyterian Healthcare Sys., Nos. 10 Civ. 2661 (PAC), 10 Civ. 2662 (PAC), 10 Civ. 2683 (PAC), 10 Civ. 3247 (PAC), 2011 U.S. Dist. LEXIS 8585, at \*17 n.9 (“Although the collective bargaining agreement was not attached to the Complaint, the Court takes judicial notice of its existence.”); see also Gonzales v. Nat’l Westminster Bank PLC, No. 11-cv-1435 (BSJ), 2012 U.S. Dist. LEXIS 42781, at \*4 n.2 (S.D.N.Y. Mar. 6, 2012).

I thank the Court for its courtesies in allowing this submission.

Respectfully submitted,

/s/

Daniel Gomez-Sanchez  
Assistant Corporation Counsel

cc: Cronin & Byczek, LLP (by ECF)  
Attorneys for Plaintiff  
1983 Marcus Avenue, Suite C120  
Lake Success, NY 11042  
(516) 358-1700  
lcronin@cblawyers.net

Honorable Ramon E. Reyes, Jr. (by ECF)  
United States Magistrate Judge  
United States District Court  
Eastern District of New York  
225 Cadman Plaza  
Brooklyn, NY 11201